IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.870 OF 2006
WITH
CIVIL APPLICATION NO.1208 OF 2006

Monica Michael Bharsakal. ..Appellant.

V/s.

Nashik Diocesan Council and ors. ..Respondents.

Ms.Prachi Tatake for appellant.

Mr.V.A.Gangal & Chandrakant Yadav for respondent No.5.

Mr.Vijay Killedar for respondent No.6.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 26, 2007.

P.C. :

1. Heard counsel for the parties.

2. This appeal from order takes exception to the Judgment and order passed by the Joint Civil Judge, Sr.Division, Nasik dated 7th December, 2006 below Exh. 5 in Special Civil Suit No.436 of 2006. The appellant instituted suit against the Corporation and others for the following reliefs.

A) It may kindly be declared that Plff. has become owner of the suit property by adverse possession.

B) Deft.No.1 or its authorized signatory may kindly be directed to register ownership of the property in the office of Jt.District Registrar, Nasik by paying the value of the suit property Rs.2,50,000/- to the trust by the Plff.

C) The document registered at serial No.9823 dt.1/08/2000 in the office of the Jt.District Registrar, Nasik may kindly be declared as illegal, null & void.

D) Deft.Nos.2 to 7 may kindly be perpetually restrained by issuing prohibitory orders against them directing them not to disturb peaceful possession of the plff. over suit property in any manner.

E) The prohibitory orders be issued against Deft.No.5 directing that Deft. No.5 shall not act upon or proceed further according to the Notice No.196 dated 20/10/2006 issued by its office. Likewise, Deft.No.5 Commissioner, Municipal Corporation, Nasik may kindly be directed by issuing prohibitory orders directing him not to accord any of the permission for development of the suit property perpetually.

F) Ad interim injunction as per above prayer in clause (D) & (E) may kindly be granted in favour of the Plff. till the disposal of the suit.

G) The Plff. may kindly be permitted, to add, alter any of the pleadings, if necessary.

H) Cost of the suit kindly be awarded to the Plff. from the Defts. Affidavit is filed herewith.

The appellant, pursuant to notice dated 20th October,

2006 prayed for prohibitory order in terms of prayer clause (E). Consistent with that relief the appellant took out Exh. 5 during the pendency of the suit for restraining the Corporation from acting upon the suit notice No.196 dated 20th October, 2006 and for further order that the Corporation shall not accord permission to develop suit property in any manner till disposal of the suit. However, at the hearing before this Court the appellant has pressed first part of the relief of restraining the Corporation from acting upon the suit notice no.196 dated 20th October, 2006. Other issues are not subject matter of this appeal.

3. The grievance of the appellant is that the suit notice is vague and purports to initiate action in respect of the structure which is occupied by the appellant, although notice is directed against the respondent No.6 in relation to the structure possessed by respondent No.6. In so far as grievance of the appellant about vagueness of the notice, that is partly correct. On perusal of the suit notice, it is seen that it gives the area of the entire structure without specifically highlighting the unauthorised portion in that structure and the fact as to who is in possession of the subject structure.

4. To ascertain the correct position, during the pendency of this appeal, Corporation was called upon to produce rough sketch of the structure and to identify the unauthorised portion therein. The Corporation has produced rough sketch under signature of Executive Engineer, Town planning. Unauthorised structure is marked in green colour, which is on the rear side of the existing structure. Counsel for the appellant on instruction states that out of portion highlighted in green in the rough sketch, only small portion is in possession of the appellant and the remaining portion is occupied by respondent No.6. It is stated that the appellant has no difficulty if the Corporation were to proceed on the basis of suit notice against the structure occupied by the respondent No.6. The respondent No.6 has not challenged the suit notice so far. Indeed, the counsel for the respondent no.6 states that respondent no.6 has filed representation before the Corporation, which fact is stated on affidavit. If such representation has been filed, the competent authority will have to decide the same in accordance with the law.

5. As mentioned earlier, there is no clarity in

the suit notice regarding exact area of the unauthorised structure against which the Corporation intends to initiate action. The position is explained before this Court on the basis of the rough sketch. The appropriate course as is rightly suggested by the counsel for the Corporation is to permit the Corporation to issue additional notice to the respective parties clearly indicating the structure occupied by them out of unauthorised portion marked in green.

6. The additional notice be served on appellant as well as respondent No.6 in relation to the portion occupied by them respectively. After receipt of additional suit notice, the appellant and/or respondent No.6 may file representation before the authority, which shall be decided within 15 days after giving proper opportunity to the noticee and final decision be taken by the Corporation. If it is found that no satisfactory material is produced by the noticee regarding the structure being authorised, the Corporation may proceed on the basis of suit notice, which is followed by the proposed notice and take necessary action with regard to the suit structure.

7. In case, the decision of the competent authority is adverse to the noticee, no precipitative steps be taken for a period of two weeks from the date of service of such order. It will be open to the noticee/appellant and/or respondent No.6 to question the correctness of the said decision before the appropriate forum, as may be advised, which proceeding will be decided on its own merits in accordance with the law.

8. In view of the above arrangement, counsel for the appellant fairly submits that the relief (E) claimed in the suit will not survive for consideration. The appellant will take steps to inform the trial Court about this position, so that appropriate formal order will be passed in that behalf by the trial Court and suit can proceed in respect of other reliefs.

9. Copy of the rough sketch given under signature of the Executive Engineer, Town Planning is taken on record. Counsel for the appellant and respondent no.6 have marked the portion in occupation by the respective parties out of the unauthorised structure highlighted in the sketch on the basis of instructions of Mr.Lawren Bharaskal, who is related

to appellant and respondent No.6, to be kept in sealed cover in the custody of Registrar Judicial. The highlighted portion in red ink out of the green mark is occupied by appellant. Certified copy of the rough sketch which is taken on record, be made available to the parties, if applied.

10. The appeal as well as civil application disposed of on the above terms.